

Notice of Allowability

Application No.

09/891,340

Examiner

Dwin M. Craig

Applicant(s)

BAUMGARTNER ET AL.

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 5-27-2005.
2. ☒ The allowed claim(s) is/are 1-20.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

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DETAILED ACTION

And

EXAMINER'S REASONS FOR ALLOWANCE

1. **Claims 1-20** are allowed.
2. As regards Applicant's amendment to the claim language of Independent claims 17, 18 and 19, the Examiner thanks the Applicants' for amending the claim language. The Examiner notes that the claims are now directed towards statutory subject matter and hereby withdraws the earlier 35 USC § 101 utility rejections of those claims.
 - 2.1 An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ted Shields Registration Number 31,569 on 8-24-2005.

- 2.2 In claim 1 please change "A method" to -- A computer implemented method --.
- 2.3 In claim 7 please change "A method" to -- A computer implemented method --.
- 2.4 In claim 11 please change "A method" to -- A computer implemented method --.
- 2.5 In claim 17 please change "a medium" to -- a computer readable medium --.
- 2.6 In claim 18 please change "a medium" to -- a computer readable medium --.
- 2.7 In claim 19 please change "a medium" to -- a computer readable medium --.
- 2.8 In claim 20 please change "A method" to -- A computer implemented method --.

Examiner's Reasons for Allowance

3. The following is an examiner's statement of reasons for allowance: As regards independent claim 1, the following limitations, in combination with other limitations are neither anticipated nor made obvious by the prior art, *"applying harvest criteria to the test case by using the test-coverage file and the harvest-goals file, wherein it is determined whether the accumulative count of hits for each event meets the initial goal, the accumulative count of hits for each event meets the initial goal, the accumulative count of hits for an event being incremented by the number of hits for the event in the test-coverage file;"* in combination with *"determining whether all test cases in the test-case list are processed by analyzing the harvest-goals file"*. Further, the Examiner notes that the Applicants' argued that the specific limitation, *"determining whether all test cases in the test-case list are processed by analyzing the harvest-goals file"* in neither disclosed nor made obvious by US Patents 6,675,138 and 6,128,258 as argued on page 13 of the 5-27-2005 response. The combination of Applicants' instant amendments to the claims and the arguments presented in the 5/27/2005 response have been persuasive and the Examiner withdraws the earlier 35 USC § 103 rejections of claim 1.

3.1 As regards independent claims 7, 18 and 19 the following limitations, in combination with other limitations are neither anticipated nor made obvious by the prior art, *"computer program code for applying harvest criteria to the test case by using the test-coverage file and the harvest-goals file, wherein it is determined whether the accumulative count of hits for each event meets the initial goal, the accumulative count of hits for each event meets the initial goal, the accumulative count of hits for an event being incremented by the number of hits for the event in the test-coverage file;"* in combination with *"computer program code for determining whether*

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all test cases in the test-case list are processed by analyzing the harvest-goals file". Further, the Examiner notes that the Applicants' argued that the specific limitation, *"computer program code for determining whether all test cases in the test-case list are processed by analyzing the harvest-goals file"* in neither disclosed nor made obvious by US Patents 6,675,138 and 6,128,258 as argued on page 13 of the 5-27-2005 response. The combination of Applicants' instant amendments to the claims and the arguments presented in the 5/27/2005 response have been persuasive and the Examiner withdraws the earlier 35 USC § 103 rejections of claim 7, 18 and 19.

3.2 As regards independent claims 11 and 20, the following limitations, in combination with other limitations, are neither anticipated nor made obvious by the prior art, *"determining if the goal for an event is met;"* and *"incrementing the number of the accumulative hits in the harvest-goals file by the number of hits in the test-coverage file;"* and *"determining whether the accumulative count of hits for each event meets the corresponding initial goal"* in in further combination with *"determining if there is another event to evaluate by analyzing the harvest-goals file"*. The combination of Applicants' instant amendments to the claims and the arguments presented in the 5/27/2005 response has been persuasive and the Examiner withdraws the earlier 35 USC § 103 rejections of claims 11 and 20.

3.3 Dependent claims 2-6, 8-10 and 12-16 are allowed as they depend from an allowed base claim.

3.4 Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

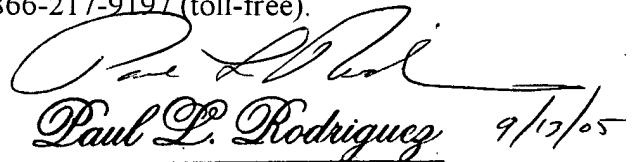
4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 6,327,551 discloses a method of extracting goals from a data structure (Abstract), "Improving Online Performance Diagnosis by the Use of Historical Performance Data" discloses harvesting historical data.

4.1 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwin M. Craig whose telephone number is (571) 272-3710. The examiner can normally be reached on 10:00 - 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo P. Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DMC


Paul L. Rodriguez 9/12/05
Primary Examiner
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